

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GURDEV SINGH, [A42-976-796],

CASE NO. 08CV464 BTM (JMA)

**Petitioner,**

vs.

MICHAEL CHERTOFF, ET. AL. .

ORDER DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[Doc. 2]; GRANTING MOTION FOR  
APPOINTMENT OF COUNSEL [Doc.  
3]; AND ORDER TO SHOW CAUSE  
WHY THIS PETITION SHOULD NOT  
BE GRANTED.

On March 12, 2008, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241. He simultaneously filed a motion to proceed in forma pauperis ("IFP Motion") and a motion for appointment of counsel.

19 The Court has considered Petitioner's declaration in support of his motion to proceed  
20 IFP under 28 U.S.C. § 1915 and his motion for appointment of counsel. Petitioner's  
21 application to proceed IFP reveals that Petitioner has \$370 in his prison trust account.  
22 Based on the above, the Court finds that Petitioner is able to pay the \$5 filing fee for his  
23 Petition. The Court therefore DENIES Plaintiff's motion to proceed IFP. He must pay the  
24 filing fee within 30 days or this matter will be dismissed.

25 Plaintiff also requests appointment of counsel pursuant to 18 U.S.C. §3006A. 18  
26 U.S.C. § 3006A(a)(2)(B) provides that “[w]henever the United States magistrate or the  
27 court determines that the interests of justice so require, representation may be provided for  
28 any financially eligible person who . . . (B) is seeking relief under section 2241.” In deciding

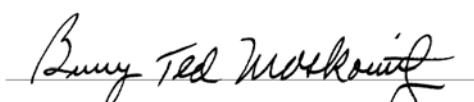
1 whether to appoint counsel, the district court "must evaluate the likelihood of success on the  
2 merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the  
3 complexity of the legal issues involved." Weygandt v. Look, 718 F.2d 952, 954 (9<sup>th</sup> Cir.  
4 1983); Rand v. Rowland, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997).

5 Here, the Petitioner has demonstrated a likelihood of succeeding under the merits.  
6 Petitioner has been subject to a order of removal since January 24, 2007 and has been  
7 detained since that time. Upon review of the Petition, the Court concludes that Petitioner has  
8 demonstrated a likelihood of success in challenging his prolonged immigration detention  
9 under Tijani v. Willis, 430 F.3d 1241 (9<sup>th</sup> Cir. 2005) and Nadarajah v. Gonzalez, 443 F.3d  
10 1069 (9<sup>th</sup> Cir. 2006). The Court further finds that Petitioner would have difficulty articulating  
11 his claims *pro se* given the complexity of immigration law and the fact that Petitioner's claims  
12 are based on a relatively new and evolving area of the law. The Court therefore GRANTS  
13 Petitioner's Motion for Appointment of Counsel. The Court appoints Federal Defenders as  
14 Petitioner's counsel in this case.

15 Having reviewed Petitioner's claims, the Court finds that summary dismissal of the  
16 petition is not warranted at this time. Accordingly, Respondents are ordered to show cause  
17 why the petition should not be granted. Respondents shall file a written return by May 9,  
18 2008. Petitioner may file a traverse by May 23, 2008. This matter shall be calendared for  
19 disposition on June 6, 2008 at 11:00 a.m. Petitioner shall pay the filing fee within 30 days  
20 or this case will be closed and the petition dismissed.

21 IT IS SO ORDERED.

22 DATED: April 16, 2008



23  
24 Honorable Barry Ted Moskowitz  
United States District Judge  
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